IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5447 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

HARSHADBHAI CHETANDAS SADHU

Appearance:

1. Special Civil Application No. 5447 of 2001

Mr. M.R. Mengde, AGP for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 21/11/2003

ORAL JUDGEMENT

Heard learned AGP Mr. M.R. Mengde, for Petitioner and MR PH PATHAK for Respondent. In this

petition, the petitioner State has challenged the award made by the labour court, Kalol in Reference NO. 343 of 1996 dated 10th August,2000 wherein the labour court has granted reinstatement with full back wages for the intervening period. The petition was admitted by this court on 18th July, 2001 and while admitting the petition, operation of the award in question was stayed by this court. From the perusal of the impugned award, it appears that it is an ex parte award. During the pendency of this petition, one civil application no. 4860 of 2003 was filed by the workman for benefit of section 17B of the ID Act, 1947 as the workman has remained without employment and has not been employed gainfully. In view of the said civil application, this court directed the petitioner to pay the benefit under section 17B of the ID Act, 1947 to the respondent workman within two weeks from the date of receipt of copy of the said order. Today, when asked, learned AGP Mr.Mengde has not been able to submit as to whether the amount as directed by this court has been paid to the respondent workman or not under section 17B of the ID Act, 1947.

Once the labour court has made an ex parte award against either of the parties, there is a statutory remedy provided under rule 26A of the Industrial Disputes (Gujarat) Rules, 1966 which is giving right and remedy to either of the parties to approach the concerned labour court by filing an application for setting aside such an ex parte award within thirty days from the date of receipt of copy of such an award and the labour court is having power to condone delay, if any, caused in approaching the labour court under the said rules and the labour court can condone such delay and can also stay operation of the said ex parte award under rule 26B of the said Rules. In view of that, according to my opinion, when a complete statutory remedy has been provided under the Industrial Disputes (Gujarat) Rules, 1966, such a direct petition cannot be entertained by this court and the petition can be disposed of by directing the petitioner to approach the concerned labour Court under rule 26A/26B of the Rules. At this stage, learned AGP Mr.Mengde has submitted that the interim relief granted by this court on 18.7.2001 may be directed to continue for some breathing period for enabling the petitioner to approach the labour court under rule 26A/26B of the said Rules He has also requested that the labour court may be directed to consider such an application under rule 26A/26B of the said Rules on merits and decide the application for condonation of delay after considering the period consumed by the petitioner in prosecuting the present petition before

this court.

I have considered the submissions made by the learned advocates for the parties. Considering the facts and circumstances of the present petition, this petition is disposed of with a liberty in favour of the petitioner to approach the labour court Kalol under rule 26A of the Industrial Disputes (Gujarat) Rules, 1966 alongwith an application for condonation of delay and to point out sufficient cause for condonation of delay. As and when such an application is received by the labour court, Kalol for condonation of delay, it is directed to the labour court to decide such an application for condonation of delay while keeping in view the pendency of this petition before his court for about two years and also the period consumed by the petitioner for approaching this court and to decide the same sympathetically and entertain the matter on merits without being influenced by delay. In the mean time, ad.interim relief granted by this court on 18.7.2001 shall continue to operate against the award made by the labour court till the labour court, Kalol decide the application that may be filed by the petitioner under rule 26A/26B of the said Rules subject to the condition that till such period during which the ad.interim relief shall operate, the petitioner shall also continue to pay to the respondent workman the benefit under section 17B of the ID Act, 1947 and shall also pay the arrears thereof from the date of the award 10th August, 2000 till 30th November, 2003, within two months from the date of receipt of copy of this order, if the same has not so far been paid by the petitioner to the respondent workman and thereafter, shall pay the same to the respondent till the application under section 26A/26B of the said Rules is decided by the labour court. The labour court, Kalol shall consider and decide such an application under rule 26A/26B of the said Rules after ascertaining that the petitioner has paid to the respondent workman the benefits as per the interim directions issued by this court or not.

With these observations and directions, this petition is disposed of. Rule is discharged. There shall be no order as to costs. Interim relief granted earlier shall stand vacated.

Dt. 21.11.2003. (H.K.Rathod,J.)
Vyas